

Introduced by Senator Simitian

February 17, 2005

An act to amend Section 25354.5 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 421, as amended, Simitian. Hazardous substances: methamphetamine labs: *funding*.

Existing law requires the Department of Toxic Substances Control to take removal actions with respect to a hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, or a material intended to be used in the unlawful manufacture of controlled substances, and the department is authorized to expend funds appropriated from the Illegal Drug Lab Cleanup Account in the General Fund for this purpose. *Existing law requires the account to be funded by moneys appropriated directly from the General Fund.*

~~The department is authorized to enter into an oral contract of up to \$10,000, when, in the judgment of the department, immediate corrective action to a hazardous substance subject to this requirement is necessary to remedy or prevent an emergency.~~

~~This bill would increase the amount of an oral contract that the department is authorized to enter into under those circumstances, to \$15,000~~ *establish a procedure to determine the annual cost of the department for taking these removal actions, by requiring the development of an annual work plan and cost estimate. The bill would require the department, by September 1, 2006, and every September 1 annually thereafter, to set the amount of a fee upon the first sale of pseudoephedrine in this state at an amount sufficient to fund the annual work plan.*

The bill would require the State Board of Equalization to collect a fee, commencing January 1, 2007, upon the first sale of pseudoephedrine in this state, in the amount determined by the department. The bill would require the fee revenues to be deposited in the Illegal Drug Cleanup Lab Account, for expenditure to take those removal actions. The bill would delete the requirement that the account be funded by moneys appropriated directly from the General Fund.

By imposing a new tax, this bill would result in a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Methamphetamine is a powerful and addictive stimulant
- 4 that affects the central nervous system.
- 5 (b) The drug is made in clandestine laboratories with
- 6 relatively inexpensive over-the-counter ingredients.
- 7 (c) The primary ingredient in methamphetamine production is
- 8 pseudoephedrine, which is found in many over-the-counter cold
- 9 medicines. It has become the new precursor for making
- 10 methamphetamine. Criminals have easy access to
- 11 pseudoephedrine, which has led to a rapid increase in
- 12 clandestine “kitchen” methamphetamine labs.
- 13 (d) If a typical box of pseudoephedrine decongestants contains
- 14 24 tablets, a methamphetamine manufacturer would need 29
- 15 boxes of tablets to make an ounce of methamphetamine.
- 16 (e) Other chemicals utilized in methamphetamine production
- 17 include toxic substances, such as lye, muriatic acid, acetone, and
- 18 red phosphorous. A home methamphetamine maker's “shopping
- 19 list” for those chemicals would typically include drain opener,
- 20 driveway cleaner, paint thinner, and match heads.
- 21 (f) The chemicals specified in subdivisions (c) and (e) are
- 22 harmful if ingested, inhaled or absorbed through the skin. In

1 *Arizona, police frequently charge methamphetamine makers with*
2 *felony child abuse if any minors are in the home where*
3 *manufacturing is taking place.*

4 *(g) The chemicals specified in subdivisions (c) and (e) can*
5 *contaminate structural materials, furnishings, wastewater*
6 *systems, and soils.*

7 *(h) Chemicals found in methamphetamine labs can cause*
8 *cancer, short-term and permanent brain damage, developmental*
9 *and growth problems in children and teens, reproductive system*
10 *toxicity, internal and external chemical burns, immune system*
11 *problems, heart problems, and respiratory system problems.*
12 *Young children breathe and develop faster than adults and*
13 *therefore can be much more susceptible to the chemicals used to*
14 *manufacture methamphetamine.*

15 *(i) Methamphetamine labs can be set up in almost any*
16 *location, including a motel, house, apartment, storage unit,*
17 *vehicle, kitchen, or barn, using instructions that are easily*
18 *available on the Internet. If methamphetamine is cooked within a*
19 *building, the chemicals from the cooking process are conducted*
20 *and spread throughout the entire building.*

21 *(j) The Department of Toxic Substances Control has*
22 *completed emergency cleanups of over 15,000 methamphetamine*
23 *labs in the past 10 years. Under existing law, the gross removal*
24 *of an illegal drug lab is the emergency cleanup of a hazardous*
25 *substance that poses an immediate threat to public health or*
26 *safety. The Department of Toxic Substances Control is*
27 *responsible for this portion of the cleanup, which is paid for*
28 *using General Fund moneys.*

29 *(k) The deep-cleaning or remedial action of a*
30 *methamphetamine lab is the responsibility of local health and*
31 *human services departments, environmental health divisions,*
32 *hazardous materials divisions, or fire departments. The local*
33 *agency issues a notice to the property owner to clean up the*
34 *property, but the standard for cleanup of those labs varies from*
35 *local agency to local agency and from property owner to*
36 *property owner.*

37 *(l) Existing law places the ultimate responsibility for the*
38 *remedial cleanup of a former methamphetamine lab in the hands*
39 *of the property owner.*

1 ~~SECTION 1.~~

2 ~~SEC. 2.~~ Section 25354.5 of the Health and Safety Code is
3 amended to read:

4 25354.5. (a) Any state or local law enforcement officer or
5 investigator or other law enforcement agency employee who, in
6 the course of an official investigation or enforcement action
7 regarding the manufacture of any illegal controlled substance,
8 comes in contact with, or is aware of, the presence of a substance
9 that the person suspects is a hazardous substance at a site where
10 an illegal controlled substance is or was manufactured, shall
11 notify the department for the purpose of taking removal action, as
12 necessary, to prevent, minimize, or mitigate damage that might
13 otherwise result from the release or threatened release of the
14 hazardous substance, except for samples required under Section
15 11479.5 to be kept for evidentiary purposes.

16 (b) (1) Notwithstanding any other provision of law, upon
17 receipt of a notification pursuant to subdivision (a), the
18 department shall take removal action, as necessary, with respect
19 to any hazardous substance that is an illegal controlled substance,
20 a precursor of a controlled substance, a material intended to be
21 used in the unlawful manufacture of a controlled substance and
22 any container for such a material, a waste material from the
23 unlawful manufacture of a controlled substance, or any other
24 item contaminated with a hazardous substance used or intended
25 to be used in the manufacture of a controlled substance. The
26 department may expend funds appropriated from the Illegal Drug
27 Lab Cleanup Account created pursuant to subdivision (e) to pay
28 the costs of removal actions required by this section. The
29 department may enter into oral contracts, not to exceed ~~fifteen~~
30 ~~thousand dollars (\$15,000)~~ *in ten thousand dollars (\$10,000) in*
31 obligation, when, in the judgment of the department, immediate
32 corrective action *with respect* to a hazardous substance subject
33 to this section is necessary to remedy or prevent an emergency.

34 (2) The department shall, as soon as the information is
35 available, report the location of any removal action that will be
36 carried out pursuant to paragraph (1), and the time that the
37 removal action will be carried out, to the local environmental
38 health officer within whose jurisdiction the removal action will
39 take place, if the local environmental officer does both of the
40 following:

1 (A) Requests, in writing, that the department report this
2 information to the local environmental health officer.

3 (B) Provides the department with a single 24-hour telephone
4 number to which the information can be reported.

5 (c) (1) For purposes of Chapter 6.5 (commencing with
6 Section 25100) or this chapter, any person who is found to have
7 operated a site for the purpose of manufacturing an illegal
8 controlled substance or a precursor of an illegal controlled
9 substance is the generator of any hazardous substance at, or
10 released from, the site that is subject to removal action pursuant
11 to this section.

12 (2) During the removal action, for purposes of complying with
13 the manifest requirements in Section 25160, the department, the
14 county health department, the local environmental health officer,
15 or their designee may sign the hazardous waste manifest as the
16 generator of the hazardous waste. In carrying out that action, the
17 department, the county health department, the local
18 environmental health officer, or their designee shall be
19 considered to have acted in furtherance of their statutory
20 responsibilities to protect the public health and safety and the
21 environment from the release, or threatened release, of hazardous
22 substances, and the department, the county health department, the
23 local environmental health officer, or their designee are not
24 responsible parties for the release or threatened release of the
25 hazardous substances.

26 (3) The officer, investigator, or agency employee specified in
27 subdivision (a) is not a responsible party for the release or
28 threatened release of any hazardous substances at, or released
29 from, the site.

30 (d) The department may adopt regulations to implement this
31 section in consultation with appropriate law enforcement and
32 local environmental agencies.

33 (e) The Illegal Drug Lab Cleanup Account is hereby created in
34 the General Fund and the department may expend any money in
35 the account, upon appropriation by the Legislature, to carry out
36 the removal actions required by this section. ~~The account shall be~~
37 ~~funded by moneys appropriated directly from the General Fund.~~

38 (f) The responsibilities assigned to the department by this
39 section apply only to the extent that sufficient funding is made
40 available for that purpose.

(g) (1) *The following procedure shall be used to determine the annual cost for the department to take removal actions pursuant to this section, with respect to any hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, a material intended to be used in the unlawful manufacture of a controlled substance and any container for such a material, a waste material from the unlawful manufacture of a controlled substance, or any other item contaminated with a hazardous substance used or intended to be used in the manufacture of a controlled substance.*

(A) *On or before March 1, 2006, and on or before March 1 annually thereafter, the department shall submit to the Department of Finance an annual work plan for taking removal action pursuant to this section, including the estimated costs that the department will incur to complete that work plan. In determining the annual cost of completing the work plan, no more than 3 percent of the annual cost shall include the department's costs for overhead and administration.*

(B) *On or before April 1, 2006, and on or before April 1 annually thereafter, the Department of Finance shall certify that the proposed work plan is feasible and that the estimated cost for completing the work plan is within 25 percent of the estimate determined by the Department of Finance to complete the annual work plan.*

(C) *If the Department of Finance does not certify the department's proposed work plan and the cost estimate pursuant to subparagraph (B), the Department of Finance and the department shall meet and confer and produce a final work plan and cost estimate on or before the subsequent May 1 after that decision not to certify the work plan and cost estimate.*

(D) *If, after conducting a meeting pursuant to subparagraph (C), the Director of Finance and the director do not agree on the work plan and cost estimate, the Governor shall submit a work plan and cost estimate to the department on or before the subsequent May 15.*

(2) (A) *On or before September 1, 2006, and September 1 annually thereafter, the department shall set the amount of a fee upon the first sale of pseudoephedrine in this state at an amount sufficient to fund the annual work plan developed pursuant to paragraph (1).*

1 *(B) Commencing January 1, 2007, the State Board of*
2 *Equalization shall collect a fee upon the first sale of*
3 *pseudoephedrine in this state, in the amount determined pursuant*
4 *to subparagraph (A). The fee revenues shall be deposited in the*
5 *Illegal Drug Cleanup Lab Account, for expenditure pursuant to*
6 *this section.*

O